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Paper No. 8

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OFFICE OF PETITIONS

In re Application of

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Application No. 09/382,681

Filed: August 25, 1999

Attorney Docket No. P55792

: DECISION GRANTING

: PETITION

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This is a decision on the petition filed November 24, 1999, and supplemented April 10, 2000, requesting in essence, that the above-identified application papers be accorded a filing date of August 25, 1999 based on the contents of the Korean priority document present in the USPTO on that date, and that the requirements of 37 CFR 1.59 be waived such that the English language specification present on that date be returned to applicant. The delay in treating the petition is regretted.

The petition is **granted**.

On August 25, 1999, the USPTO received, *inter alia*, a certified copy of Korean application 34480/1998, a claim for benefit under 35 USC 119 of the Korean document, and: an English language specification, 2 drawings, and 20 claims, the latter items all apparently constituting the U.S. counterpart application of the aforementioned Korean priority document, and a declaration which executed the English language specification.

On November 24, 1999, applicant filed a communication indicating that the English language specification present on filing did not conform to the Korean priority document, requested that the English language specification present on filing be disregarded, and further requested that, the USPTO treat the Korean priority document as an application filed on August 25, 1999, in a language other than English (and submitted that fee), and presented a certified translation of the Korean priority document.

On February 8, 2000, the Office of Initial Patent Examination (OIPE) sent a Notice indicating that Figures 3 and 4, which were

described in the English language specification were missing.

On April 10, 2000, in reply to the Notice, applicant timely filed a communication styled as a petition under 37 CFR 1.59 to expunge and return the English language specification (20 pages including claims and abstract) originally filed on August 25, 1999, a preliminary amendment to the translation, and an IDS. On the same date, applicant filed a petition styled as filed under 35 USC 111(a), requesting, in essence, that the communications filed to date be considered an acceptable reply to the Notice, since the reference to 4 drawing figures arose from an incorrect English language specification, and in fact, based on the correct Korean specification, only 2 drawings were described, and these were both present on filing.

Inspection of the certified translation of the Korean priority document reveals that the priority document, present on August 25, 1999, provided a specification, the 2 drawings referenced in that specification, and 11 claims. Thus, on August 25, 1999, the Korean priority document satisfied the requirements of 35 USC 111(a) and 37 CFR 1.53 for obtaining a filing date. To facilitate further processing, the undersigned has prepared a photocopy of the abstract specification and claims from the Korean priority document. Since the 2 sheets of drawings present on August 25, 1999 apparently correspond to the 2 drawings present in the priority document and have been accepted by the draftsman, these acceptable 2 drawings will continue to be used. Likewise, since the declaration present on filing executed the originally filed English language specification which (at 1) expressly incorporated by reference the Korean priority document, a supplemental declaration is not required. 37 CFR 1.59 is waived such that the entire English language specification (numbered pages 1 through 20) is being returned with this mailing. Lastly, on petition, the Notice of Omitted items is considered immaterial to the now correctly identified application papers, and is withdrawn.

The above-identified application papers are being forwarded to the Office of Initial Patent Examination, for further processing as a nonprovisional application filed on August 25, 2000 under 35 U.S.C. 111(a) and 1.53(b), using the photocopy of the specification (on pages 1 through 9) and 11 claims (on pages 10 through 13) of the Korean priority document, with the declaration and 2 drawing figures filed August 25, 1999.

Telephone inquiries related to this decision should be directed to the undersigned. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.



Brian Hearn
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Enclosure: English language specification (pp 1-20) filed 8/25/99